

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER

03-CR-56S

STEVEN D. BLUMHAGEN AND
SUSAN M. BLUMHAGEN,

Defendants.

1. Trial in this case is scheduled to begin on Tuesday, April 25, 2006. The Government has recently advised this Court that a plea disposition has been reached with Defendant Steven D. Blumhagen. This Court is in receipt of the plea agreement and has it under consideration pursuant to Rule 11 (c) of the Federal Rules of Criminal Procedure.

2. The Government has also advised this Court that it intends to move to dismiss the Indictment against Susan M. Blumhagen pursuant to Rule 48(a). Rule 48(a) permits the government to dismiss an Indictment with leave of the court. It is the government's responsibility to bring to the court's attention the grounds for dismissal so that the court can determine whether dismissal of the Indictment is against the public interest. See United States v. Doody, No. 01 CR. 1059, 2002 WL 562644, at *2 (S.D.N.Y. Apr. 16, 2002) (court will deny motion to dismiss indictment if dismissal is clearly contrary to manifest public interest) (citing United States v. Pimentel, 932 F.2d 1029, 1033 (2d Cir. 1991) (quoting United States v. Cowan, 524 F.2d 504, 513 (5th Cir. 1975))).

In this regard, the rule contemplates public notice of the government's reasons for seeking dismissal, which is also what this district requires. See United States v. Marra, 228 F.Supp.2d 280, 281 n.2 (W.D.N.Y. 2002) (citing United States v. Rosenberg, 108 F.Supp.2d 191, 204-05 (S.D.N.Y. 2000) ("[Rule 48(a)] contemplates *public exposure* of the reasons for the abandonment of an indictment . . . in order to prevent abuse of the

uncontrolled power of dismissal previously enjoyed by prosecutors.") and United States v. Salinas, 693 F.2d 348, 352 (5th Cir. 1982) (stating that the prosecutor is under an obligation to supply "sufficient reasons" for the dismissal)). Accordingly, as set forth below, the government will be required to file a public statement setting forth its grounds for dismissing the Indictment against Susan Blumhagen.

3. Moreover, this Court will require the government to include a statement explaining its decision to enter a plea with Steven Blumhagen and to move to dismiss the Indictment against Susan Blumhagen in its notice to the victims in this case. In this Court's view, inclusion of this information is consistent with the public notice required by Rule 48 and with the substantive provisions of the Crime Victims Rights Act ("CVRA"), 18 U.S.C. § 3771.¹ The CVRA provides victims the right to reasonable and accurate notice of public court proceedings, the right to be reasonably heard at any public proceeding involving the entry of a plea, and the right to be treated with fairness. See 18 U.S.C. § 3771(a)(2), (4) and (8). Notice of the government's position makes these rights meaningful, as victims who choose to exercise their right to be heard will be able to tailor their comments accordingly, and will not be unfairly surprised by the government's position on the day of the plea proceeding.

4. Further, the CVRA provides victims the right to timely notice of public court proceedings. 18 U.S.C. § 3771(a)(2). Therefore, the government must give sufficient notice to the victims to ensure that they have a reasonable opportunity to submit written statements or attend the plea proceeding personally. See United States v. Turner, 367

¹The CVRA is Title I of the Justice For All Act of 2004, Pub.L. 108-405.

F.Supp.2d 319, 332 (E.D.N.Y. 2005) ("timely' is designed to be a flexible concept that ensures a victim can reasonably arrange her affairs to attend the proceeding for which notice is given").

IT HEREBY IS ORDERED, that counsel for the parties shall appear before this Court on Tuesday, April 18, 2006, at 2:00 p.m., in Part IV, United States Courthouse, 68 Court Street, Buffalo, New York, for plea proceedings.

FURTHER, that the government shall file a statement setting forth its grounds for dismissing the Indictment against Susan Blumhagen on or before Thursday, April 6, 2006.

FURTHER, that the government shall send notice of the date, time and location of the above plea proceedings to the victims in accordance with the CVRA, and shall include a statement in the notice explaining its decision to enter a plea with Steven Blumhagen and to move to dismiss the Indictment against Susan Blumhagen, on or before Thursday, April 6, 2006.

FURTHER, that the government shall provide this Court with a copy of the notice it sends to the victims.

FURTHER, that the parties' obligation to file pretrial submissions in accordance with this Court's Pretrial Order (Docket Nos. 169 and 172) is STAYED until further Order of this Court.

SO ORDERED.

Dated: April 3, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge